MERCURY REFINING SUPERFUND SITE
UPDATED QUESTIONS AND ANSWERS ("Q &A")
REVISED *DE MINIMIS* SETTLEMENT

On September 26, 2005, EPA sent notice of potential liability to 425 *de minimis* parties along with an offer to enter into a *de minimis* settlement with EPA pursuant to Section 122(g) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), as amended, 42 U.S.C. 9622(g), regarding the Mercury Refining Superfund Site ("Site"), located at 26 Railroad Avenue, on the border of the Towns of Guilderland and Colonie, Albany County, New York. Two hundred ninety two parties agreed to settle with EPA and signed the settlement agreement. On August 23, 2006, EPA published notice of the settlement for public comment. EPA received significant comments on the settlement. In light of some of those comments and for other reasons explained below, EPA is hereby withdrawing that settlement offer and issuing a revised settlement offer.

The discussion below relates to the revised settlement offer only. If you have questions about the original settlement offer, please refer to the Q&A attached to the October 26, 2005 letter.

WHAT IS THE MERCURY REFINING SUPERFUND SITE AND WHAT ACTIONS HAVE BEEN TAKEN AT THE SITE THUS FAR?

The Mercury Refining Superfund Site (the "Site"), located at 26 Railroad Avenue, in the Towns of Guilderland and Colonie, Albany County, New York, is a federal government "Superfund" site. From the 1950s through 1998, the Site was used by the Mercury Refining Company, Inc. ("Mereco") as a mercury reclamation facility where liquid mercury and mercury-bearing materials were brought. Through the mercury reclamation process, hazardous substances came to be disposed of at the Site.

During operations at the Site, special "retort" ovens were used to heat mercury and/or mercury-bearing materials and recover elemental mercury, which was then further processed and refined on the Site. Until 1980, residual materials which resulted from the retort process were dumped behind a furnace building after the mercury was removed for reclamation. After 1980, these wastes were stored in drums before they were sent to off-Site disposal facilities. Tests in the early 1980s indicated the presence of waste to at least 3 feet below the Site ground surface. The New York State Department of Environmental Conservation Wildlife Pathology Unit performed sampling in the early 1980s and discovered high levels of polychlorinated biphenyls ("PCBs") and mercury in soils and stream sediments at and in the vicinity of the Site. Additional testing was performed and it was determined that groundwater, surface water, sediments, and soil were contaminated with heavy metals including mercury, zinc and lead. On September 1, 1983, the Site was placed on the National Priority List ("NPL"), a national list of high-priority sites, primarily due to mercury, which is a hazardous substance under the Superfund law, (also known as the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA") 42 U.S.C. §9601-9675). The New York State Department of Environmental Conservation ("NYSDEC") became the lead agency for clean-up and enforcement at the Site.
In 1985, Mereco, among others, signed a consent decree pursuant to CERCLA with the State of

New York. Pursuant to this consent decree, Mereco excavated and removed approximately 2,100 cubic yards of mercury-contaminated soil and debris and 300 cubic yards of PCB-contaminated soil. Contaminated soil that was found beneath the "retort" building was left in place. The excavated area was regraded with clean fill and capped to keep rainwater from spreading any remaining contaminants. Mereco also completed a fish monitoring program in a tributary to Patroons Creek, itself a tributary of the Hudson River, which runs adjacent to the Site. However, following the cleanup work under the consent decree, air emissions from continued operations, discharges of mercury-containing wastes into a storm sewer, sloppy materials handling, and two fires caused continuing releases of hazardous substances onto the soils, groundwater and surface water at and in the vicinity of the Site. From 1989 through late 1999, Mereco entered into a number of agreements with NYSDEC under the New York State Environmental Conservation Law and the federal Resource Conservation and Recovery Act ("RCRA") to study and clean-up contamination in soils at the Site, and study contamination in surface water and sediments in the vicinity of the Site. Additionally, in 1996, NYSDEC issued a corrective action permit under RCRA. In February 1994 Mereco replaced the old retort with new retorts with state-of-the-art pollution control equipment and in 1993 Mereco constructed a RCRA-compliant container storage building. Because Mereco failed to fulfill all of the requirements of these various agreements and the permit, in November 1999, NYSDEC ordered Mereco to cease all cleanup work at the Site and requested that EPA take over as the lead agency for cleanup and enforcement at the Site under the Superfund program. In 2000, EPA initiated a remedial investigation/feasibility study ("RI/FS") at the Site. The remedial investigation included reviewing all prior information known about the Site, sampling the soil, groundwater, surface water and sediments at and in the vicinity of the Site and analyzing the samples to determine the extent of contamination. An RI Report was issued on December 4, 2003. The RI called for a Baseline Ecological Risk Assessment ("BERA") which was completed in March 2005. In March 2008, EPA issued a Proposed Plan which identified EPA's proposed cleanup or remedial action for the Site. EPA received public comments on the Proposed Plan and on September 30, 2008, EPA issued a Record of Decision ("ROD") for the Site. The ROD calls for, among other things, a combination of excavation and off-Site disposal of certain soils and stabilization/solidification of other soils, excavation and off-Site disposal of certain sediments at the Site and institutional controls.

WHY AM I RECEIVING THIS LETTER?

You are part of the group of parties that EPA has identified as "*de minimis* parties" which means you sent less than 1.0% of the Contributing Waste sent to the Site (see discussion below in this section). All of the *de minimis* parties combined sent 23% of the Contributing Waste. As more fully discussed below in the section entitled "How Did You Calculate My Settlement Amount" the *de minimis* parties are being asked to sign an administrative agreement to pay their individual percentage share of: 1) the projected cost of the remedy including EPA's projected oversite costs; 2) EPA's interim costs; 3) EPA's unreimbursed past costs; and 4) a premium to account for uncertainty.

EPA reviewed Mereco's business records and hazardous waste manifests. These records identify

the various generators of particular shipments of mercury and/or mercury-bearing materials sent to the Site, the quantity of materials sent, the date of the shipments, and the type(s) of material sent. EPA has used these records to identify contributors to the Site and has entered information from these records into a database.

EPA's database contains evidence on over 3,000 contributors who sent a total of approximately 7,500,000 pounds of mercury and mercury-bearing materials to the Site. In reviewing the information in the database, EPA removed from consideration all parties who contributed less than 200 lbs. of hazardous substances or material containing hazardous substances to the Site because they are considered *de micromis* parties and are not liable under Section 107(o) of CERCLA, 42 U.S.C. §9607(o). For the original settlement offer EPA also removed from consideration all parties who sent only batteries to the Site because EPA believed that these parties would likely satisfy their burden under the Superfund Recycling Equities Act ("SREA"), Section 127 of CERCLA, 42 U.S.C. §9627, and could therefore successfully argue they are exempt from liability. As discussed more fully below, EPA has re-evaluated its position on batteries and has determined that an exemption under SREA is not available to parties that sent batteries to the Site before the effective date of EPA's Universal Waste Rule, 40 CFR Part 273, which specifically regulated the recycling of batteries. Therefore, for this revised settlement offer, EPA is now including all batteries on the waste-in list which were shipped to the Site prior to May 11, 1995. For more information on SREA in general, and EPA's revised battery position, please see the SREA discussion below. Finally, EPA removed from consideration the hazardous substances and material containing hazardous substances which were sent to the Site from parties which could not be located by EPA or which are deceased (in the case of an individual) or insolvent or defunct (in the case of a business). For purposes of this document, EPA is calling all locatable parties who sent to the Site 200 lbs. or more of mercury or mercury-containing material (including batteries sent to the Site prior to May 11, 1995) "Contributing Parties," and their contribution is being called "Contributing Waste." Note that since the original *de minimis* settlement was issued, EPA determined that an additional 44 parties are either unlocatable, insolvent or otherwise defunct. Additionally, EPA identified 93 locatable, viable parties that sent batteries to the Site prior to May 11, 1995 that were not included on the original *de minimis* settlement waste-in list. Unfortunately, EPA no longer has documentation regarding the battery shipments for 53 of these parties and thus they have been removed from EPA's waste-in list. These 53 parties combined waste-in equals 13,484.52 lbs. or 0.17% of the total waste sent to the Site. Thus, a total of 421 parties are included on the revised *de minimis* settlement waste-in list.

Certain assumptions were made when inputting data into the database. For instance, in creating the waste-in list, EPA utilized the entire weight of the mercury-bearing material (i.e., the weight of the shipment to Mereco) sent, not the amount of mercury contained therein. This approach is consistent with EPA's February 22, 1991 guidance, "Final Guidance on Preparing Waste-in Lists and Volumetric Rankings for Release to Potentially Responsible Parties (PRPs) Under CERCLA." This approach is also more fully discussed in EPA's response to the comments on the original *de minimis* settlement which is designated as Attachment 2 to the *de minimis* offer letter.

Assumptions were also made to accommodate shipments that were sent to the Site and denoted in units other than pounds. With the exception of "Alkaline Solutions/Acidic Solutions," where

EPA used the weight of water (8.33 lbs/gal.) as a conversion factor, there are no standard conversion factors which can be used to address the reported quantities of the other types of materials listed in the documents in units other than pounds. For example, a 55-gallon drum of batteries does not weigh the same as a 55-gallon drum of pressure regulators. To deal with this issue, EPA asked Mereco's plant manager for his best estimate of the weight of the various different material-types. EPA has made the conversions in accordance with the information provided by the plant manager and has noted in the database when such a conversion was made. If your materials are affected, a note indicating the conversion factor used appears on your Transaction Summary Report which is being sent to you along with this letter.

HOW DOES THIS SETTLEMENT OFFER DIFFER FROM THE ORIGINAL SETTLEMENT OFFER?

Based on comments received during the public comment period of the original *de minimis* settlement (see response to comments, Attachment 2 to the *de minimis* offer letter), EPA conducted a further investigation into Site operations and determined that after February 15, 1994 new retorts were operative and the old retort was dismantled. EPA reviewed documents and spoke with both NYSDEC and EPA employees who had occasion to inspect the Mereco facility between February 1994, when the new retort became operational, through May 1998, when Mereco ceased processing mercury. While there were some minor releases which were reported on Mereco's Toxic Release Inventory after the new retorts were operational, EPA's investigation found no further information showing that mercury brought to the Site from February 1994 through May 1998 contributed to the contamination that needs to be remediated at the Site. Since the TRI shows some evidence of releases after February 1994 and because Section 107(a)(3) of CERCLA, 42 U.S.C. 9607(a)(3) holds liable "any person who by contract, agreement or otherwise arranged for disposal or treatment ... of hazardous substances" at a facility, and the same hazardous substance (in this case mercury) is present at the Site, for settlement purposes only, EPA has amended the waste-in list to discount the amount of Contributing Waste brought to the Site from February 15, 1994 through May 1998 by 85%. As a result, rankings have changed and certain parties that were major parties are now *de minimis*. You are still included in this settlement even if you only sent material to the Site after February 1994, since the TRI shows some evidence of releases after February 1994 and since Section 107(a)(3) of CERCLA, 42 U.S.C. 9607(a)(3) holds liable "any person who by contract, agreement or otherwise arranged for disposal or treatment ... of hazardous substances" at a facility, and the same hazardous substances (in this case mercury) is present at the Site. Another change from the original settlement offer which was made because of comments received during the public comment period had to do specifically with waste sent to the Site from the New York City Transit Authority ("NYCTA"). Like other parties, the Metropolitan Transportation Authority ("MTA"), NYCTA's parent, argued that the weight of the items sent to the Site far exceeded the amount of mercury contained therein. Specifically, MTA argued that they sent very large arc rectifiers to the Site which weighed approximately 20,000 lbs. each but each contained only about 350 lbs. of mercury. Of the New York City Transportation Authority's 31 shipments to the Site, eight of these involved eight arc rectifiers that the commenter describes. The rectifiers in the eight shipments were 14,000 to 22,500 pounds each. The remaining 23 MTA shipments

contained mercury and other mercury-contaminated materials, including small arc rectifiers. EPA has learned that the eight giant arc rectifiers were indeed treated differently than all other waste that was sent to the Site. According to the former Mereco plant manager, Mereco built a booth in the retort building in which it drained each giant arc rectifier of its mercury, then power washed the remaining steel until wipe samples indicated that it was free of mercury. The remaining steel was then shipped off-Site as scrap metal. Mereco retorted approximately 350 lbs. of mercury plus 150 lbs. of sludge and metal for each giant arc rectifier brought to the Site. Since these items were the only items brought to the Site that were not either retorted or otherwise disposed of on-Site EPA is counting the weight of each of the eight shipments of giant arc rectifiers as 500 lbs. As to the remaining 23 shipments, since these items were treated the same as all other shipments in that the entire shipment was either retorted or otherwise disposed of on-Site (in this case retorted), EPA is making no adjustment for these shipments with the exception of the adjustment for shipments sent to the Site after February 1994 discussed above.

Finally, as discussed above, and since nearly one-third of the non-*de micromis* waste sent to the Site was batteries, EPA reviewed its position regarding the inclusion of batteries on the waste-in list. Section 127(e)(2)(C) states that, among other things, a party seeking to avail itself of the recycling exemption must show that "with respect to transactions involving, other spent batteries, Federal environmental regulations or standards are in effect regarding the storage, transport, management, or other activities associated with the recycling of such batteries, and the person was in compliance with applicable regulations or standards or any amendments thereto." During its initial review, EPA considered the Resource Conservation and Recovery Act ("RCRA") and the Hazardous and Solid Waste Amendment of 1984 ("HSWA") provisions regarding storage, transport and management of hazardous waste as applicable. However, a further reading of the Section as well as a more extensive review of Congress's intent has caused EPA to conclude that the SREA liability exemption does not apply to batteries shipped to the Site prior to the enactment of the Universal Waste Rule on May 11, 1995, which specifically regulated the recycling of batteries. Thus, all known batteries sent to the Site before this date, from locatable parties, are now included on the waste-in list. Note that the 85% reduction discussed above was also applied to batteries sent to the Site from February 1994 through May 11, 1995.

HOW WILL EPA TREAT THE LARGE VOLUME CONTRIBUTORS?

EPA will seek to have the parties that sent more than a *de minimis* share of waste to the Site (that is, the parties with individual waste shares of 1.0% or more) implement the remedy to be selected by EPA for the Site and pay EPA's outstanding costs. There are12 viable "non-*de minimis*" parties whose combined waste totals approximately 77% of the Contributing Waste to the Site. These 12 parties have received letters notifying them of their liability at the Site and, in the near future, they will receive "special notice" letters, inviting them to enter into settlement negotiations with EPA to fund and perform the remedial action selected in the ROD. The money paid by the settling *de minimis* contributors under the *de minimis* settlement will be applied to reduce the amount of unreimbursed past and/or future costs, which will lessen the total liability of the non-*de minimis* parties at the Site.

WHAT DOES EPA'S PLAN DO FOR ME?

EPA believes that you are a *de minimis* contributor at the Site. As stated above, for purposes of this Site, a *de minimis* party is a party who has a share of less than 1.0% of the Contributing Waste. Since you are a small contributor, the Superfund law allows EPA to offer you a special settlement under which you would resolve your liability to EPA at the Site in return for a lump sum payment by you. EPA can only offer these special agreements to parties that contributed only wastes that are both (1) minimal in amount and (2) of minimal toxic or hazardous effect in comparison to other wastes at the Site.

EPA is inviting you to participate in the revised *de minimis* settlement by signing the revised Administrative Order on Consent ("AOC"). Appendix C to the AOC (as well as Attachment 4 to the *de minimis* offer letter) sets forth the settlement amounts for each of the *de minimis* parties. The discussion below, "How Did You Calculate My Settlement Amount", sets forth how EPA arrived at each settlement amount.

By entering into the revised *de minimis* settlement and paying your settlement amount, you will resolve your liability to EPA for interim pre-RD/RA, cleanup and oversight costs at the Site as well as for EPA past costs. You will not be sued by EPA and you will not be forced into lengthy negotiations with EPA over what your share of the costs should be. By avoiding such negotiations, you can minimize many of the expenses that can be involved in resolving your liability.

However, the recent U.S. Supreme Court decision entitled, United States v. Atlantic Research Corporation, 172 S.Ct. 2331, 169 L.Ed. 2d 28 (June 11, 2007) (the "ARC decision") alters the landscape with respect to the protection afforded to you upon settlement with EPA. As you may recall, EPA's October 26, 2005 letter and its attached Q & A informed you that by entering into the settlement, you would resolve your liability to EPA for the Site, and also would be afforded the statutory protection from contribution actions found in Sections 122(g)(5) and 113(f)(2) of the Superfund law (CERCLA §§ 9622(g)(5) and 9613(f)(2)). In the ARC decision, however, the Supreme Court ruled that a liable party in Atlantic Research Corporation's position could sue other liable parties under Section 107(a)(4)(B) of Superfund, 42 U.S.C. § 9607(a)(4)(B). Therefore, while you may be protected from claims for contribution, some parties could try to sue you for cost recovery under Section 107.

The United States is still formulating its positions in light of the ARC decision. Therefore, it is not possible to say what positions the United States will take in the future regarding the ability of liable parties to assert claims to recover response costs under CERCLA Section 107 against parties that have already settled with the United States, including *de minimis* parties. Such claims could potentially circumvent the contribution protection provided to settled parties under CERCLA Section 113. It is also not possible to predict how the courts will rule in this area. However, the United States has taken the position in court that potentially responsible parties performing work under a settlement with the United States cannot sue other *de minimis* parties under CERCLA Section 107. Furthermore, it has long been EPA's position that *de minimis*

settlements are integral to the success of the Superfund program, and EPA has taken action to facilitate and protect *de minimis* settlements. This Updated Q&A should not be construed as offering legal advice, and you should speak to a legal practitioner in this area of law should you want more information about the ARC decision.

WHAT COULD HAPPEN TO ME IF I DON'T ENTER INTO THIS AGREEMENT WITH EPA?

Your participation in this settlement is voluntary. If you choose not to enter into this settlement with EPA, EPA or the non-*de minimis* parties may, in the future, seek a greater amount from you than you would pay under this *de minimis* settlement, and/or EPA may require that you participate in the implementation of the selected remedy. Even if EPA chooses not to pursue you for the costs of the cleanup, the Superfund law allows other parties to seek "contribution" from you for the portion of the cleanup costs allocable to you, if you have not settled with EPA. Parties that may have paid more than their share of the costs can bring a lawsuit against you pursuant to Section 113 of CERCLA, 42 U.S.C. §9613. Additionally, as discussed above, parties that perform cleanup work at the Site may also bring a lawsuit against you pursuant to Section 107(a) of CERCLA, 42 U.S.C. §9607(a), to recover response costs they may have incurred.

WILL THIS *DE MINIMIS* SETTLEMENT RELEASE ME FROM ALL FUTURE LIABILITY AT THE SITE?

No. In addition to the ARC issue discussed above, the United States has reserved certain rights under Paragraphs 24 and 25 of the revised AOC. For example, if information is discovered which indicates that you contributed hazardous substances to the Site in a significantly greater amount or of significantly greater toxicity than we currently believe, you may no longer qualify as a *de minimis* party. Such a determination by EPA could be based on new information which results in a determination that you contributed greater than 1.0% of the Contributing Waste to the Site. Additionally, EPA cannot enter into a settlement with you that releases you from any liability you might have to New York State for the costs it incurred at the Site or to the Natural Resource Trustees for any natural resource damages associated with the Site.

WHAT IS THE SUPERFUND RECYCLING EQUITY ACT AND WHY DOESN'T IT APPLY TO ME?

As discussed above, in November 1999, Congress passed the SREA which was enacted as an amendment to CERCLA at Section 127 and which exempts parties that arranged for the recycling of certain specified materials. Because Congress specifically defined categories of recyclable materials, it did not intend to exempt all recyclers from liability. Only those that fell within one of the specifically identified categories are exempt.

An inquiry as to whether a party is exempt from liability under SREA begins with a determination as to whether the person "arranged for recycling of recyclable material". 42 U.S.C. §9627(a)(1). SREA defines "recyclable material" to include

> scrap paper, scrap plastic, scrap glass, scrap textiles, scrap rubber (other than whole tires), scrap metal or spent lead-acid, spent nickel cadmium, and other spent batteries, as well as minor amounts of material incident to or adhering to the scrap material as a result of its normal and customary use prior to becoming scrap....

Based on information EPA has gathered to date, including information obtained from Mereco's owner and from its plant manager for over 20 years, Mereco predominantly reclaimed mercury, and any items sent to Mereco were sent for reclamation of mercury.[1] With limited exceptions, no other portion of the items sent to Mereco from the various contributors was recovered by Mereco; rather, all such other portions were either disposed of at a landfill, on- or off-Site depending on the time period, or burned or disintegrated in the retort ovens.

EPA has also concluded that mercury, although a metal, does not fit within the definition of a "scrap metal" found at Section 127(d)(3) of CERCLA. For purposes of SREA, scrap metal is defined as:

> bits and pieces of metal parts (e.g., bars, turnings, rods, sheets, wire) or metal pieces that may be combined together with bolts or soldering (e.g., radiators, scrap automobiles, railroad box cars), which when worn or superfluous can be recycled, except for scrap metals that the Administrator excludes from this definition by regulation.

Much of the mercury sent to the facility for reclamation was in either powder or liquid form. As a powder or a liquid, the mercury cannot be considered a "bit or piece of metal parts" or "metal pieces that may be combined together with bolts or soldering". Since there was no arrangement to recycle a recyclable material, SREA does not apply to Mereco transactions and you therefore are not eligible for exemption under SREA.

SREA specifically identifies spent batteries as a "recyclable material." Based on a review of Site records, EPA has determined that parties who sent spent batteries to the Site after May 11, 1995, when the Universal Waste Rule was issued, are likely eligible for the exemption. EPA is therefore not including those parties in this settlement, nor are their batteries included in the total calculation of pounds of material sent to the Site.

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[1]Mereco also had a small precious metals recycling business. In general, Mereco would accept silver batteries for reclamation. After the small amount of mercury was removed from the silver batteries, the remainder of the battery would be placed in another machine where it would be pulverized. The resulting powder would be shipped off-Site to a refinery and the remaining casings would either be landfilled or, if they contained enough steel, shipped to a different refinery.

WHAT COSTS AM I LIABLE FOR?

CERCLA authorizes EPA to use public funds to clean up hazardous substances or to compel the parties responsible for the contamination at a particular site to perform or pay for the cleanup. Where EPA spends public funds in conducting cleanup and other response activities, including related potentially responsible party searches and other enforcement activities, CERCLA authorizes EPA to recover the costs it has incurred from any or all parties that sent hazardous substances to the site, regardless of the amount of waste they contributed as long as the amount exceeded 110 gallons or 200 pounds. EPA is not required to determine the exact share of any party's contribution to the site. In addition, any potentially responsible party that performs or finances cleanup at a Superfund site may seek to recover a portion of the costs from other responsible parties who have not settled with EPA. In any event, for settlement purposes only, EPA has allocated responsibility among the PRPs at this Site based on a waste-in list.

The amount that you are being asked to agree to pay is set forth in Appendix C of the enclosed revised AOC as well as Attachment 5 of the *de minimis* offer letter.

HOW DID YOU CALCULATE MY SETTLEMENT AMOUNT?

In general, when entering into *de minimis* settlements, EPA calculates a basic payment amount and a premium payment. In this case, the basic payment is a percentage of the unreimbursed past and projected future costs for the Site. The premium payment is an additional payment by which the risk taken by EPA for providing the *de minimis* parties with a release from liability in return for a lump sum is offset by a payment in excess of the party's volumetric share of the projected cost to complete the cleanup. Premium payments vary according to a variety of factors specific to both the site and the settlement. When EPA provides a complete covenant not to sue for a site, EPA generally requires a premium of 100% of the anticipated future costs at the Site. The payment amount is also reduced to account for the orphan share at the Site. Each *de minimis* party is asked to pay its percentage share of these costs.

EPA's past and future costs were derived as follows:

A. <u>EPA's Past Response Costs</u>

Based on two cost documentation packages and a SCORPIOS report, EPA has incurred $5,599,391.35 in response costs through October 31, 2008. EPA entered into a prior ability-to-pay settlement with Mereco and Leo Cohen, Mereco's founder, for $527,389.80. The money received has been placed in a Special Account for the Mereco Site. EPA has unreimbursed past costs of $5,072,001.55.

B. Future and Interim Costs

1. EPA's Interim Costs

For purposes of this *de minimis* settlement, EPA's interim costs include costs associated with the performance of the treatability study for which invoices have yet to be processed (approximately $77,500), costs to close-out the RI/FS contractor work assignment (approximately $74,000), and costs associated with contractor assistance to issue the revised settlement offer (approximately $30,000). EPA estimates a total of approximately $181,500 in Interim Costs.

2. Future Remedy Costs

The ROD calls for, among other things, a combination of excavation and off-Site disposal of certain soils, and stabilization/solidification of other soils, and excavation and off-Site disposal of certain sediments at the Site. The estimated remedy costs included in the ROD total $11,080,000. EPA also estimates approximately $500,000 (including indirect costs and annual allocation costs) for EPA oversight of the cleanup. Thus, Future Remedy Costs are estimated to be $11,580,000.

3. Premium

Due to the sheer number of parties involved, EPA believes that this settlement needs to be a final settlement. Therefore, EPA is not including a cost re-opener. To account for the uncertainty in costs, the possibility of cost overruns and/or remedy failure, EPA is requiring the payment of a 100% premium on all future and Interim response costs. A 100% premium with no cost re-openers is consistent with EPA's July 7, 1995 guidance, "Standardizing the *De Minimis* Premium". The premium is therefore $11,761,500.

C. Orphan Share

Under EPA's orphan share policy, EPA helps to fund a portion of Superfund cleanup costs attributable to parties that are financially insolvent or defunct. Consistent with EPA's June 3, 1996 guidance, "Interim Guidance on Orphan Share Compensation for Settlors of Remedial Design/Remedial Action and Non-Time-Critical Removals," the maximum amount appropriate for compensating for the existence of an orphan share (hereinafter, the "MAAC") is the lesser of the actual orphan share percentage of total Site costs (including unreimbursed past costs and future response costs), 25% of the future ROD costs, or the unreimbursed pasts costs plus future oversight costs. For purposes of calculating the orphan share, orphan parties are defined as those parties which are insolvent or defunct. A party which is unlocatable is considered defunct. Parties which are exempt from liability under Sections 107(o) (because they sent less than 200 lbs. of material to the Site) or 127 of CERCLA (because they sent spent batteries to the Site after May 11, 1995) are not considered orphans. While the calculated MAAC under the original settlement offer was the actual orphan share of 13.43%, because EPA identified a number of additional orphan parties since the original settlement offer was made, including several major parties, the actual orphan share increased to approximately 19%. Because of this increase the

actual orphan share of future response costs is greater than 25% of the ROD costs and therefore the MAAC is now 25% of future ROD costs or $2,770,000. EPA will provide orphan share compensation in the amount of $2,770,000.

D. Calculation of Settlement Amounts

For this revised settlement offer, EPA is using a different method for determining each party's individual settlement share. EPA realized that utilizing a price per pound calculated as we did for the original settlement, resulted in spreading the premium across all parties on the waste-in list and thus had the effect of diminishing the premium payment by the *de minimis* parties who are supposed to pay the full premium. Thus, rather than calculating a price per pound, EPA has instead calculated each party's individual settlement amount by utilizing the formula explained in EPA's December 20, 1989 guidance entitled "Methodologies for Implementation of CERCLA Section 122(g)(1)(A) *De Minimis* Waste Contributor Settlements." The guidance includes three types of costs for which the *de minimis* parties are responsible: past costs, future costs, and the premium. Thus, prior to a deduction for the orphan share**,** the *de minimis* parties would be responsible for the following amounts: unreimbursed past costs of $5,072,000 (rounded); future costs (including Interim Costs) of $11,761,500, and a premium equal to those future costs.

However, this amount has been reduced because EPA is providing the *de minimis* parties with the benefit of the orphan share. As discussed in C. above, since making the original settlement offer, EPA has recalculated the MAAC to be 25% of the ROD remedy costs or $2,770,000. Therefore, to calculate each *de minimis* party's individual settlement amount, EPA multiplied each party's percentage share of the total adjusted Contributing Waste at the Site by $25,825,001, which is the total past and future costs including premium less the orphan share of $2,770,000.[2]

WHAT IF I CANNOT AFFORD TO PAY THE SETTLEMENT AMOUNT?

If you do not believe you can pay the entire amount that EPA is seeking from you to join the *de minimis* settlement, you will need to submit information on your finances to EPA as promptly as possible. EPA is authorized to enter into a settlement with you based on the amount of money you can pay. In order to do this, you must contact the Mercury Refining Site toll free information line at 866-353-0976, as soon as possible but no later than fourteen (14) days of your receipt of EPA's offer letter. The operator will tell you what documents you will need to submit. Such documents will likely include signed copies of the last three years of federal and state tax returns including all schedules and attachments, and a completed Financial Statement of Corporate Debtor or Financial Statement for Individuals, which require information regarding assets and expenses.

[2] Each party's percentage share was calculated by dividing the party's individual weight of adjusted Contributing Waste by the total weight of adjusted Contributing Waste. (See column 6 of Attachment 4 of the *de minimis* offer letter.

Based on the financial information you submit, EPA may agree that you have a legitimate inability to pay the full amount, may disagree, or may require the submittal of additional financial information. EPA cannot offer financial terms unless we receive the complete financial information requested. Failure to provide financial information on a timely basis will make it impossible for EPA to consider any accommodation based on financial need.

WHERE CAN I REVIEW ADDITIONAL INFORMATION ON THE SITE?

To find out more about the *de minimis* settlement and/or the Site, EPA has set up a toll-free telephone information line for this Site at 866-353-0976 which you may make use of on any weekday between the hours of 10:00 am and 5:00 pm, EDT.

The Record of Decision as well as all of the *de minimis* settlement documents can be found at http://epa.gov/region02/superfund/npl/mercuryrefining/. The Administrative Record for the Site is also available at the following locations during regular business hours:

1. United States Environmental Protection Agency
   Region II
   Superfund Records Center
   290 Broadway, 18th Floor
   New York, NY 10007-1866

2. Robert Jaquay, Director
   William K. Sanford Town Library
   629 Albany Shaker Road
   Loundonville, NY 12211